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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/802,156	03/17/2004	Mark A. Buchalter	441800	3935
27717 7590 06/30/2008 SEYFARTH SHAW LLP 131 S. DEARBORN ST., SUITE 2400 CHICAGO, IL 60603-5803				
EXAMINER				
CASTELLANO, STEPHEN J				
ART UNIT		PAPER NUMBER		
3781				
MAIL DATE		DELIVERY MODE		
06/30/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/802,156

Applicant(s)

BUCHALTER ET AL.

Examiner

/Stephen J. Castellano/

Art Unit

3781

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 April 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-7 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-946)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date: _____

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1 and 3 are rejected under 35 U.S.C. 102(b) as being anticipated by Dutt et al.

(Dutt).

Dutt discloses a holder capable of supporting a flexible bag, the holder is a plastic can comprising a sidewall 18 having an upper rim 62, a surface (the downwardly indented upper surface that is concave and provided with opening 90) integral to the sidewall, a locking portion defining a recess (opening 90) such that the locking portion and the recess do not contact the rim, a locking member (plug 96) having a bag retaining notch (notch which engages the sealing bead 80), the locking member is carried on the surface by the locking portion for movement between a release position and a locking position whereby the notch is entirely within the recess, and below the surface, when in the locking position, and the locking member doesn't contact the upper rim.

Re claim 3, a pivoting structure 122, 124 supports the locking member.

Claim 1 is rejected under 35 U.S.C. 102(e) as being anticipated by Alvares et al.

(Alvares).

Alvares discloses a holder capable of supporting a flexible bag, the holder is a can comprising a sidewall 10 having an upper rim 62 (where the bead is formed at the top of the sidewall 10), a surface (the horizontal planar surface between reference sign 13 and opening 12),

a locking portion defining a recess (opening 12), and a locking member having a bag retaining notch (the portion of peripheral wall 12 of lid 20 that includes circumferential recess 24).

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 and 3-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Joyce-Middaugh in view of Marisco and Bergaila.

Joyce-Middaugh discloses a bag holder formed by the combination of a trash receptacle and a divider (20), the holder has a sidewall having an upper rim (peripheral member 21), a surface (the top surface of flange 31) is integral to the sidewall, a locking portion defining a recess (concave portion 29) wherein the locking portion and recess are confined to the surface and do not contact the adjacent upper rim, and a locking member (fastener arm 35) pivots between locking and release positions to capture a mouth edge of a bag within the concave recess 29. The locking member doesn't contact the upper rim. Joyce-Middaugh discloses the invention except for the bag-retaining notch. Marisco and Bergaila both teach bag-retaining notches at bottom portions of respective locking members, the recesses are below a corresponding top surface, when in the locking position. It would have been obvious to add the bag-retaining notch to provide an area to collect or gather excess bag material to provide proper operation of the locking member and to maintain an aesthetically pleasing appearance without excessive bag spill-out from the bag locking portion. Also, it would have been obvious to provide the notch at a location at the very bottom of the locking member so that the notch is entirely within the recess

because this area of the locking member is not subjected to the friction forces that occur at the sides of the locking member as the locking member is fitted into locking position. Thereby, no friction force acts to disengage the bag from the recess upon locking.

Re claims 4-6, Joyce-Middaugh discloses an integrally molded shaft extending across the recess but fails to disclose a second notch to receive a pivot shaft. Bergaila teaches a pivot with a separately rotated pivot shaft separated from a second notch for receiving the pivot shaft. It would have been obvious to modify the Joyce-Middaugh shaft construction to be a separate shaft and a pivot shaft receiving notch to provide for separation to allow easy cleaning or replacement of a damaged locking member without the need to remove or replace the pivot shaft.

Re claim 7, flange 45 of Joyce-Middaugh defines a handle tab.

Applicant's arguments filed April 8, 2008 have been fully considered but they are not persuasive. Applicant states that Joyce-Middaugh fails to provide a single locking portion and locking member. The locking portion and locking member were clearly and particularly stated to be the concave recess 29 and the fastener arm 35, respectively, in the prior action. It is not understood why applicant might find these elements to be deficient. It is not understood why applicant further qualifies the locking portion with the word "single." "Single" doesn't appear in the claim language. The locking portion and locking member do not contact the upper rim (21).

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after

the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to /Stephen J. Castellano/ whose telephone number is 571-272-4535. The examiner can normally be reached on increased flexibility plan (IFP).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony D. Stashick can be reached on 571-272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Stephen J. Castellano/
Primary Examiner
Art Unit 3781